IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

WP(C).No. 28124 of 2006(W)

SC.802/2004 of ADDL.DISTRICT COURT, KOZHIKODE

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PETITIONER:

JOY, S/O.JOSEPH,
NADUTHOTTIYIL HOUSE, MORANI,
ALAKKODE AMSOM AND DESOM,
KANNUR DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS:

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1. THE CIRCLE INSPECTOR OF POLICE,
VADAKARA.

2. STATE OF KERALA,
REP. BY THE CHEIF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

3. THE INSPECTOR GENERAL OF POLICE,
NORTHERN RANGE,
KOZHIKODE.

BY GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J.

W.P.C.NO.28124 OF 2006

Dated this the 18th day of December, 2006.

JUDGMENT

The petitioner is the father of the deceased, an unmarried girl, aged about 24 years. She was working as a nurse in a local hospital at Vadakara. She was allegedly found lying dead inside her room, when her friend knocked at the door and not seeing response, ultimately forced open the door. The deceased had as many as 13 injuries on her person. One of those injuries was of course of needle puncture mark. There were also indications to suggest that injunction was administered prior to her death. The injuries found on the person included contusions which are shown in detail in Ext.P1 postmortem certificate. After investigation, charge sheet has been filed against an accused person under Sections 417, 376 & 306 I.P.C. The crux of the allegations is that she was induced by false representation that she would be married by the said accused. There is also an allegation that she was allegedly raped. It is further alleged that the death was a case of suicide and that such suicide was abetted by the accused in the case.

2. After investigation, final report has been filed. The case was committed to the Court of Sessions. S.C.802 of 2004 is pending before the Additional Sessions Judge, Kozhikode in respect of the said offence. It is in these circumstances that the petitioner has come before this Court complaining about the inadequacy and impropriety of the investigation.

3. The petitioner alleges that no proper investigation whatsoever has been committed. His primary grievance is that the cause of death has not been ascertained competently. If it is the case of the prosecution that the petitioner had administered diazapam on herself, the injuries found on her person remains unexplained. It is further contended that there is nothing to show that the diazapam was administered to such an extent as to cause death. In any view, the learned counsel for the petitioner argues that violent convulsions at the time of death in a case of diazapam poisoning is not expected and the conclusion that the injuries may have been suffered on account of convulsions at or immediately prior to the death is not reasonable or probable.

4. I shall not attempt to express any final opinion on the acceptability of the cause of death. Suffice it to say that having gone through the case diary, I am certainly of the opinion that

sufficient, careful, cautious and serious efforts have not been made to probe into the real case of death. My attention has been drawn to the medical evidence available. Two statements of the doctor who conducted the postmortem examination are the only pieces of material on this aspect in addition to the postmortem certificate and the chemical examination report. Suffice it to say that I am persuaded to feel that a proper, effective, efficient and adequate probe into the cause of death and the explanation for the injuries found on the person of the deceased has not been undertaken. I am in these circumstances satisfied that there is merit in the prayer for further investigation under Section 173(8) Cr.P.C. The learned Government Pleader concedes that except the doctor who conducted postmortem examination, no other medical expert has been examined. In the light of the statement of the said doctor, he must have been further examined to seek explanation for the 13 injuries found on the person of the deceased. This must have been done to rule out the theory or possibility of forcible administration of diazapam to the deceased against her will/consent.

5. This Writ Petition is, in these circumstances, allowed. It is in these circumstances directed that a further investigation

under Section 173(8) Cr.P.C shall be conducted into Crime No.723 of 1999 of Vadakara Police Station, which is now pending as S.C.802 of 2004. The 1st respondent had conducted the investigation initially. The 3rd respondent, the Inspector General of Police shall direct that the further investigation be conducted by a senior police official of proven competence. Necessary directions to that effect should be issued forthwith by the Inspector General of Police and such Investigating Officer must start further investigation within a period of one month from this date. The learned Government Pleader shall communicate this order to the Inspector General of Police, who shall ensure that the needful is done. Till such report of further investigation is obtained, further proceedings in S.C.No.802 of 2004 shall stand stayed.

R.BASANT
JUDGE

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